

EASTERN DISTRICT OF TEXAS

CIVIL ACTION NO. 1:07-CV-131

SAM DAVEE, *et al.*,

Defendants.

After careful consideration, the court concludes Plaintiff's objections are without merit. Plaintiff has failed to produce evidence precluding summary judgment. Unsworn affidavits not made "under the penalty of perjury" are not competent summary judgment evidence. *Nissho-Iwai American Corp. v. Kline*, 845 F.2d 1300, 1306 (5th Cir. 1988). Accordingly, the defendants' motion to dismiss or, alternatively, motion for summary judgment should be granted.

O R D E R

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. It is therefore

ORDERED that the defendants' motion to dismiss or, alternatively, motion for summary judgment is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Sherman, Texas, this 8th day of September, 2009.

A handwritten signature in black ink, reading "Marcia A. Crone", is positioned above a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE